

BEFORE THE HEARING EXAMINER FOR THE CITY OF RENTON

RE: Elliott Farms

DECISION UPON RECONSIDERATION

Preliminary Plat
 LUA15-000242, ECF, PP, SA-H, MOD

SUMMARY

Leland and Joanne Gregory have requested reconsideration of the approval of the above-captioned preliminary plat, issued on August 25, 2016. The Gregorys contest the location of the Elliot Farms access point to SR 169, which is located 90-100 feet from their driveway. The reconsideration request is denied and the Final Decision of the above-captioned matter is left unmodified except for the additional findings and conclusions added by this Decision Upon Reconsideration. Reconsideration is denied because the Gregorys largely or arguably entirely base their request upon assertions of error in a deviation request separately approved by City staff. The staff's deviation decision approved a reduction in minimum separation between adjoining access points on SR 169 from Code required 330 feet to the 90-100 foot separation authorized in the Elliot Farms preliminary plat approval. Since that deviation request was not timely appealed, the examiner has no jurisdiction to review it. Even if the examiner does have jurisdiction to consider some or all of the issues raised by the Gregorys, it is determined in this Decision Upon Reconsideration that the deviation for the 90-100 foot separation was properly granted by the City and that the separation satisfies general subdivision standards requiring "adequate" streets.

EXHIBITS

The following exhibits are admitted and added to the administrative record as a result of the Gregory

request for reconsideration:

Ex. 49 – September 12, 2016 Jami Balint objection to Gregory Reconsideration Request
Ex. 50 - First Order on Request for Reconsideration, dated September 13, 2016
Ex. 51 – September 19, 2016 Gregory Request for Reconsideration
Ex. 52 - September 26, 2016 City response to reconsideration request
Ex. 53 - September 30, 2016 Applicant response
Ex. 54 – October 9, 2016 Gregory Reply (received by examiner 10/11/16)
Ex. 55 - October 12, 2016 Applicant objection to Gregory Reply

FINDINGS OF FACT

Procedural:

1. Reconsideration Request Chronology. Leland and Joanne Gregory Submitted a request for reconsideration dated August 25, 2016 and received by the City on September 7, 2016. The applicant, through their attorney Jami Balint, submitted an objection dated September 12, 2016. The hearing examiner issued an order addressing the reconsideration request on September 13, 2016. The order sustained the objection in part, determining that the reconsideration request was inadmissible because it contained new evidence. The order authorized the Gregorlys to resubmit their reconsideration request without new evidence by September 19, 2016. The Gregorlys submitted a revised reconsideration request on September 19, 2016. The City submitted a response on September 26, 2016, the Applicant submitted a response on September 30, 2016 and the Gregorlys submitted a reply on October 9, 2016¹.

2. Basis of Reconsideration Request. The basis of the Gregorlys' reconsideration request was that the Elliot Farms SR 169 access point was too close to their driveway. There is conflicting information in the record as to the width of the separation, but the Elliot Farms access point is most likely 90 to 100 feet from the Gregorlys' driveway. The Gregory and Elliot Farms access points adjoin each other on the south side of SR 169. The Gregorlys' reconsideration request is primarily directed at a City decision in Ex. 24 that authorizes a reduction in the minimum separation of 330 feet between the Gregory and Elliot Farms access points required by WAC 468-52-040(3)(b)(ii)(B). The Gregorlys assert that the access point should be moved to one of two alleys located in Elliot Farms, which would roughly double or triple the separation between their driveway and the Elliot Farms SR 169 access point.

¹ The October 9, 2016 letter objected to a reference to a conversation between the Gregorlys and the applicant. That objection is sustained and the information was not considered in this reconsideration decision.

1 The Gregorys assert two impacts from the location of the Elliot Farms access point. They
2 note that they currently use the south shoulder of SR 169 as a deceleration lane to enter their
3 driveway from travelling west on SR 169 and that the approved access point eliminates this use of
4 the shoulder. The Gregorys also assert that a new SR 169 left turn lane to be added to serve the
Elliot Farms access point will restrict access to their driveway to right in/right out access.

5 3. Impacts of Proximate Elliot Farms Access Point. For the reasons outlined below, the
6 approved project access point to SR 169 provides for optimal access to SR 169 from a traffic
7 circulation and safety standpoint. The primary reason for greater separation from the Gregorys'
8 driveway would be to avoid the right in/right out turning restrictions on the Gregory driveway, but
the circulation/safety benefits of keeping the access point in its approved location outweigh the
problems caused by these turning restrictions.

9 The Gregorys do not assert any safety impact associated with the proximity of the Elliot Farms
10 access point and none is apparent from the record. Their primary issue is centered on the loss of
11 shoulder use and the loss of ability to turn left due to the required installation of a left turn lane. As
12 to the loss of shoulder use, the Gregorys do not contest the Applicant's plausible assertion in Ex. 53
13 that the frontage improvements required for the project would narrow the shoulder to five feet and
14 render it unusable as a deceleration lane no matter where the Elliot Farms SR 169 access point
15 would be located. As a result, it is determined that the approved location of the Elliot Farms SR 169
16 access point is not responsible for the loss of shoulder use for deceleration. As to the impacts of the
17 left turn lane, the Gregorys will be subjected to the same right in/right out turning restrictions onto
18 SR 169 as the future residents of the Elliot Farms project. This is certainly an inconvenience, but the
19 safety and/or circulation factors that were the basis for the Elliot Farms turning restrictions likely
20 apply as well to turning movements from the Gregorys' property, at least to a partial degree.

21 Of course, the state would only have adopted the WAC 468-52-040(3)(b)(ii)(B) 330 foot separation
22 requirement because of safety and/or circulation problems caused by intersections that are spaced
23 closer together. However, the City had to balance reducing the 330 foot spacing requirement against
24 the 2,640 foot spacing requirement between the Elliot Farms SR 169 access point and 140th Way SE,
25 also set by WAC 468-52-040(3). The approved Elliot Farms SR 169 access point is only 2,093 feet
26 from 140 Way SE, which is the maximum separation possible between the two access points. Due
to several factors identified in Ex. 52, City staff determined that on-balance maximizing the possible
separation from 140th Way SE provided for safer and more code compliant traffic circulation and
improvements than adhering to the 330 foot separation required from the Gregorys' driveway. Even
eliminating grade separation issues with the adjoining Gregory property raised in the Ex. 24
deviation approval, the considerations by staff are sufficiently compelling to conclude that safety and
circulation impacts are minimized by the approved location of the Elliot Farms SR 169 access point.
The approved access point maximizes separation from another public road intersection (140 Way
SE) and avoids the need for a cul-de-sac (which would have to be installed if the Elliot Farms SR

1 169 access point were moved to one of the project's alleys as suggested by the Gregorys). As
2 outlined in Ex. 24 and Ex. 52, a City traffic engineer found these factors sufficient to justify a
3 reduction to the 330 foot requirement. From a traffic circulation and safety standpoint, these factors
4 outweigh the inconvenience of the right in/right out limitations to the Gregorys.

5 **CONCLUSIONS OF LAW**

6 1. Authority of Examiner. The examiner has no jurisdiction to hear the validity of the
7 City's approval of the deviation request to WAC 468-52-040(3)(b)(ii)(B), Ex. 24, and likely has no
8 jurisdiction to collaterally attack the approval under general road adequacy standards applicable to
9 subdivision review.

10 RMC 4-6-060(F)(9)(b) adopts WAC 468-51 and 468-52 (which includes the 330 foot
11 separation requirement) by reference. RMC 4-6-060(Q)(1) provides that waivers from WAC 486-52
12 are subject to the criteria of RMC 4-9-250. Ex. 24 does not clearly identify the approved deviation
13 as processed pursuant to RMC 4-9-250, but in the absence of any evidence to the contrary City staff
14 are presumed to use review procedures authorized by City code. RMC 4-8-080(G) provides that
15 deviation/modification decisions are subject to appeal to the hearing examiner. RMC 4-8-110(C)(3)
16 requires appeals to be filed with the examiner within 14 days of issuance of the decision appeal. No
17 timely appeal was filed of the Ex. 24 deviation approval. In the absence of a timely appeal, a permit
18 decision, even if noncompliant with permitting criteria, can no longer be challenged. *See Nykreim*
19 *Chelan County v. Nykreim*, 146 Wn.2d 904 (2002). Further, case law is clear that cities cannot
20 collaterally revisit permitting decisions in subsequent permit applications. *See Habitat Watch v.*
21 *Skagit County*, 155 Wn.2d 397 (2005). The courts are equally clear that a permit decision cannot be
22 revisited even though no notice of the decision is provided to the public. *Durland v. San Juan*
23 *County*, 182 Wn.2d 55 (2015)(fact that neighbor did not receive notice of building permit did not
24 relieve neighbor of requirement to file an administrative appeal within time limits set by County
25 code). Given these parameters, it is clear that the Ex. 24 deviation approval cannot be revisited in
26 the Gregorys' reconsideration request. It is also likely that applying general subdivision criteria to
address the adequacy of the separation (specifically, the criterion requiring "adequate" roads, RMC
4-7-080(B)(4)) would be considered a collateral attack on the Ex. 24 deviation approval.
Nonetheless, in case on appeal the examiner is determined to have jurisdiction, applicable deviation
and subdivision standards will be addressed in this decision.

21 2. Approved Gregory/Elliot Farms Separation Complies with Applicable City
22 Standards. The approved 90-100 separation between the Gregory driveway and Elliot Farms SR 169
23 access point both satisfies the criteria for a deviation and the adequacy standard of RMC 4-7-
24 080(B)(4). The access point provides for "adequate" streets as required by RMC 4-7-080(B)(4)
because the approved access point is an optimal location in terms of safety and circulation efficiency
for the reasons outlined in Finding of Fact No. 3.


25 The Ex. 24 deviation request is governed by the standards of RMC 4-9-250(D)(2) and is
26 consistent with all of them. As required by RMC 4-9-250(D)(2), strict adherence to the separation
requirements of WAC 468-52-040(3)(b)(ii)(B) is impractical, given that two access points are

1 necessary for the project and further separation from the Gregory driveway would require closer
2 proximity to 140th Way SE, which is prohibited by the code, while at the same time necessitating a
3 cul-de-sac, which is strongly discouraged by the code. Given the balancing of factors outlined in
4 Finding of Fact No. 3, the separation deviation is the minimum deviation necessary to implement the
5 safety and circulation objectives of the comprehensive plan as required by RMC 4-9-250(D)(2)(a).
6 Further, for the reasons outlined in Finding of Fact No. 3, the deviation meets the objectives and
7 safety, function, appearance, environmental protection and maintainability intended by the Code
8 requirements, based upon sound engineering judgment as required by RMC 4-9-250(D)(2)(b). As
9 further determined in Finding of Fact No. 3, the proposal would not be injurious to other properties
as required by RMC 4-9-250(D)(2)(c), as the primary impact on the Gregorys will be right in/right
out turn restrictions, which may actually serve to enhance their safety. Since the proposed access
points optimize safety and circulation efficiency, the approved access point is consistent with the
intent and purpose of the Code as required by RMC 4-9-250(D)(2)(d). Finally, for the reasons
identified in making strict compliance with separation requirements impractical, the deviation is
shown to be justified for the use and situation intended as required by RMC 4-9-250(D)(2)(e).

10 **DECISION**

11 Reconsideration is denied for the reasons outlined in this decision. The August 25, 2016 Final
12 Decision of the above captioned matter is to remain unchanged, except that the findings and
13 conclusions of this Decision Upon Reconsideration should be considered as supplemental to the
Final Decision.

14
15 DATED this 25th day of October, 2016.

16
17 
Phil A. Olbrechts

18 City of Renton Hearing Examiner

19 20 **APPEAL RIGHTS AND VALUATION NOTICES**

21
22 RMC 4-8-080(G) provides that the final decision of the hearing examiner is subject to appeal to
23 the Renton City Council. RMC 4-8-110(E)(14) requires appeals of the hearing examiner's
24 decision to be filed within fourteen (14) calendar days from the date of the hearing examiner's
25 decision. Additional information regarding the appeal process may be obtained from the City
26 Clerk's Office, Renton City Hall – 7th floor, (425) 430-6510.

Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.